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IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

EDWARD REYNIR SULLIVAN, Petitioner, v. MATTHEW MARTELL, Warden, Respondent.	08CV0406 BEN (AJB) **ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS** Judge: Hon. Anthony J. Battaglia

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Warden Matthew Martell files this Answer to Edward Reynir Sullivan's Petition for Writ of Habeas Corpus:

I.

JUDGMENT

Sullivan is in the lawful custody of Matthew Martell, Warden, California Rehabilitation Center, after a court trial without a jury for committing residential burglary while on bail with a prior robbery conviction (Cal. Penal Code §§ 459, 460, 461, 667, 12022.1). On October 10, 1996, the Honorable Laura P. Hammes sentenced Sullivan to fifteen years in state prison in San Diego County Superior Court case number SDC117298.

II.

APPELLATE OPINION

In an opinion dated July 31, 1997, in case number D027227, the California Court of Appeal made numerous express and implied factual findings in affirming the rulings and judgment of the trial court. Sullivan has done nothing to show why the presumption of correctness mandated by 28 United States Code section 2254(e)(1) should not apply to these factual findings.

III.

AN EVIDENTIARY HEARING IS NOT PERMITTED

Sullivan is not entitled to an evidentiary hearing because he seems to rely on the same facts as he did in the state courts. *See* 28 U.S.C. § 2254(d)(2), (e).

IV.

TIMELINESS

Sullivan's Petition is barred by the one-year statute of limitations under 28 U.S.C. § 2244(d).

V.

THE AEDPA PROVISIONS OF 28 U.S.C. § 2254(d) APPLY TO SULLIVAN'S PETITION

The preclusive standard established by the Antiterrorism and Effective Death Penalty Act of 1996, 28 U.S.C. § 2254(d), applies to Sullivan's Petition. Where the state courts previously rejected Sullivan's claims on the merits, this Court must deny Sullivan relief unless he carries his burden of establishing that the state court's conclusions are contrary to, or unreasonable applications of, United States Supreme Court authority, or are based on an unreasonable determination of the facts.

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VI.

SULLIVAN MAY NOT RECEIVE RELIEF FOR ANY NEW RULE OF LAW

The rule of *Teague v. Lane*, 489 U.S. 288, 310, 109 S. Ct. 1060, 103 L. Ed. 2d 334 (1989), bars the application of any new rule of law to any claim contained in Sullivan's Petition. A grant of habeas relief in this case, particularly on any claim that Sullivan's sentence was unlawful under *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000), would violate the principle prohibiting retroactive application of new rules of criminal procedure.

VII.

STATE COURT RECORDS

The State will provide this Court the records from Sullivan's direct appeal and habeas corpus petitions as described in the accompanying Notice of Lodgment and incorporates these records with this reference. *See* Rule 5(d) foll. 28 U.S.C. § 2254.

VIII.

EXHAUSTION

Sullivan's petition for writ of habeas corpus in the California Supreme Court likely exhausted his claims. Any unexhausted claim, moreover, does not state a colorable claim for federal relief and may be denied on the merits. *See Cassett v. Stewart*, 406 F.3d 614, 623-24 (9th Cir. 2005).

IX.

CONCLUSION

The relevant facts and procedural history set forth in the accompanying Memorandum of Points and Authorities are incorporated by reference herein. Except as expressly admitted, the State denies each and every allegation of the Petition and specifically denies that Sullivan's confinement is in any way improper, that any condition of his confinement is illegal, or that any of his rights have been or are being violated in any way. The absence of a violation of Sullivan's Constitutional rights compels the denial of relief. This Court should deny all of Sullivan's claims with prejudice, deny all other relief, and deny any request for a certificate of appealability.

Dated: July 9, 2008

Respectfully submitted,

EDMUND G. BROWN JR.
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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Sullivan v. Martell**

No.: **08CV0406 BEN (AJB)**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On July 9, 2008, I served the attached **ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

EDWARD REYNIR SULLIVAN
1352 MOLINO AVENUE, STE. 203
LONG BEACH, CA 90804

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on July 9, 2008, at San Diego, California.

A. Curiel	A. Curiel (signature)
Declarant	Signature

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